### United States Court of Appeals

for the Minth Circuit

ADVANCE TRUCK COMPANY, a Corporation,

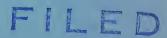
Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

### Transcript of Record

Petition to Review a Decision of the Tax Court of the United States



AUG - 4 1958.



### No. 16024

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### APPEARANCES

CHARLES H. CHASE,
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Los Angeles, Calif.,
For the Petitioner.

CHARLES K. RICE,
Asst. U. S. Attorney General;
LEE A. JACKSON,

Attorney,
Department of Justice,
Washington 25, D. C.,

For the Respondent.



## The Tax Court of the United States Docket No. 59010

ADVANCE TRUCK COMPANY, a Corporation,

Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A REDETERMINATION OF INCOME AND EXCESS PROFITS DE-FICIENCY AND FOR REFUND OF IN-COME AND EXCESS PROFITS TAXES

Advance Truck Company, the petitioner, hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Internal Revenue Service symbols AP: LA:AA:DRR 90-D), dated May 11, 1955, and for a determination of refund of income taxes; and as a basis of its proceeding the petitioner alleges as follows:

I.

The petitioner is a corporation, duly organized and existing under the laws of the State of California, with its principal office at 21740 Alameda Street, Long Beach 10, California. The return for the period herein involved was filed with the Director of Internal Revenue for the Los Angeles, California, District.

#### II.

The notice of deficiency (a copy of which is attached, marked Exhibit A, and made a part hereof) was mailed to the petitioner on May 11, 1955.

### III.

The deficiency as determined by the Commissioner is in income and excess profits tax for the taxable year ended December 31, 1950, in the amount of \$3,618.14 all of which is in dispute. In addition, the petitioner claims a refund of income and excess profits tax paid by it for the taxable year ended December 31, 1950, in the amount of \$5,348.06, or such other amount as the Court may determine.

### IV.

The determination of tax set forth in the notice of deficiency is based upon the following errors:

- (a) The respondent erred in determining that the petitioner was required to report its income on the accrual method of accounting for the taxable year ended December 31, 1950.
- (b) The respondent erred in adding to petitioner's income for the taxable year ended December 31, 1950, accounts receivable as of December 31, 1950, in the amount of \$18,467.96.
- (c) In the alternative, if the respondent correctly determined that the petitioner was required to report its income on the accrual method, the respondent erred in adding to petitioner's income for the taxable year ended December 31, 1950, accounts receivable as of December 31, 1949, in the amount of \$20,431.48.

(d) The respondent erred in not determining that the petitioner is entitled to a refund of income and excess profits taxes for the taxable year ended December 31, 1950, in the amount of at least \$5,-348.06.

#### V.

The facts upon which petitioner relies as the basis of this proceeding are as follows:

- 1. The petitioner was incorporated under the laws of the State of California in 1923.
- 2. The petitioner is engaged in the business of hauling and storing tubular goods. It does not engage in manufacturing, processing, selling or purchasing merchandise. Its business does not require the use of inventories, and inventories are not an income producing factor.
- 3. From the date of its incorporation through and including the year 1949 the petitioner has kept its books of account and reported its income on the cash receipts and disbursements method of accounting.
- 4. In the year 1950 the petitioner was required by the Interstate Commerce Commission to keep its books of account according to the method prescribed by that regulatory body. This method requires the accrual of items of income and expense.
- 5. On or before March 15, 1951, the petitioner filed its income tax return for the taxable year ended 1950 in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in

income to petitioner in the taxable year ended December 31, 1951.

Wherefore, the petitioner prays that the Court may hear this proceeding, and make the following determinations:

- (a) That there are no deficiencies in the income and excess profits taxes of the petitioner for the taxable year ended December 31, 1950.
- (b) That the petitioner overpaid its income for the taxable year ended December 31, 1950, in at least the amount of \$5,348.06.
- (c) That the overpayment of taxes was paid by the petitioner within the periods prescribed in subsection 6512(b) (2) of the Internal Revenue Code of 1954.
- (d) That the petitioner shall have such other and further relief in the premises as the Court may deem fit and proper.

Dated: July 27th, 1955.

/s/ JOHN B. MILLIKEN,

/s/ RALPH KOHLMEIER,

/s/ HARRISON HARKINS,

/s/ FRANK W. CLARK, JR.,

/s/ WALTER R. HILKER, JR.,

/s/ CHARLES H. CHASE.

### Of Counsel:

/s/ L. A. LUCE.

Duly verified.

### EXHIBIT A

U. S. Treasury Department
Internal Revenue Service
Regional Commissioner
1250 Subway Terminal Building
417 South Hill Street
Los Angeles 13, California

In Replying Refer to Ap:LA:AA-DRR 90-D

May 11, 1955.

Advance Truck Company, 21740 Alameda Street, Long Beach 10, California.

### Gentlemen:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1950, discloses a deficiency of \$3,618.14, as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days from the date of the mailing of this letter you may file a petition with The Tax Court of the United States, at its principal address, Washington 4, D. C., for a redetermination of the deficiency. In counting the 90 days you may not exclude any day unless the 90th day is a Saturday, Sunday or legal holiday in the District of Columbia,

in which event that day is not counted as the 90th day. Otherwise Saturdays, Sundays and holidays are to be counted in computing the 90-day period.

Should you not desire to file a petition, you are requested to execute the enclosed form, in duplicate, and forward it to the Assistant Regional Commissioner, Appellate, 1250 Subway Terminal Building, 417 South Hill Street, Los Angeles 13, California. The signing and filing of this form will expedite the closing of your returns by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after receipt of the form, or on the date of assessment, or on the date of payment, whichever is earliest.

Very truly yours,

T. COLEMAN ANDREWS, Commissioner of Internal Revenue;

By /s/ H. L. DUCKER,
Associate Chief, Appellate Division.

### Enclosures:

Statement Form 1276 Agreement Form Exhibit A Ap :LA :AA-DRR 90D

#### Statement

Advance Truck Company, 21740 Alameda Street, Long Beach 10, California.

> Tax Liability for the Taxable Year Ended December 31, 1950

#### Income Tax

Year	Deficiency
1950	 \$3,618.14

In making this determination of your income tax liability careful consideration has been given to the report of examination dated November 25, 1953, to your protest dated January 6, 1954, and to the statements made at the conferences held on March 20, 1954, and March 3, 1955.

During the year 1950 you changed, without obtaining the Commissioner's consent, the method of accounting in keeping your books from the eash basis to the accrual basis. Your corporation income tax return for the calendar year 1950 which was prepared and filed in accordance with the new basis of accounting (accrual) has been accepted.

Under the provisions of Section 41 of the Internal Revenue Code of 1939 a taxpayer who changes the method of accounting employed in keeping his books shall, before computing his income upon such new method for purposes of taxation, secure the consent of the Commissioner. However, the courts have held the requirement of the Commissioner's approval of a change in accounting method is satisfied without express permission where the Commissioner accepts the return.

If a petition to The Tax Court of the United States is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by The Tax Court in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice will be issued by

registered mail in accordance with section 2773 of the Internal Revenue Code of 1939.

A copy of the letter and a copy of this statement have been mailed to your representative, Mr. Charles B. Lafferty, 650 South Spring Street, Los Angeles 14, California, in accordance with the authorization contained in the power of attorney executed by you.

### Adjustments to Net Income Taxable Year Ended December 31, 1950

Net income disclosed by return	Income Tax \$78,014.16	Excess Profits Tax \$75,996.41
Unallowable deductions and additional income:		
(a) Interest disallowed	600.00	600.00
(b) Franchise tax disallowed	2,975.20	2,975.20
Net income adjusted	\$81,589.36	\$79,571.61

### Explanation of Adjustments

- (a) In your return for the year 1950 you took a deduction of \$4,956.69 as interest expense, which amount included payments made to F. W. Appleton of \$600.00. It is held that these payments were in the nature of a preferential dividend and are disallowed as a deduction.
- (b) The deduction you claimed for California franchise tax in the amount of \$6,284.76 includes the tax for doing business in 1950, based on 1949 income, and also the tax for doing business in 1951, based on 1950 income. It is held that the tax for doing business in 1951 is not an allowable deduction in the year 1950 and is disallowed in the amount of \$2,975.20.

### Excess Profits Credit Based on Income Taxable Year Ended December 31, 1950

•	
Excess profits credit as shown on return	
Decrease	\$10,420.07

### Income and Excess Profits Tax Computation Taxable Year Ended December 31, 1950

### Income Tax

Net incomeLess: Dividends received credit	
Surtax net income	\$81,273.80
Combined normal tax and surtax: (42% of \$81,273.80 minus \$4,750.00)	\$29,385.00
Alternative Tax	
Net income	\$81,589.36
Less: Excess of net long-term capital gain over net short-term capital loss	1,646.50
Ordinary net income	\$79,942.86
Less: Dividends received credit	315.56
Surtax net income	\$79,627.30
Partial tax (42% of \$79,627.30 minus \$4,750.00) Plus: 25% of long-term capital gain	
Alternative tax	\$29,105.10
Excess Profits Tax	
Excess profits net incomeLess: Excess profits credit	\$79,571.61 52,737.38
Adjusted excess profits net income	\$26,834.23
(a) 30% of \$26,834.23	\$ 8,050.27
(b) 62% of \$79,571.61	\$20,664.32
Line (a) or (b), whichever is less	\$ 8,050.27

Excess profits tax (184/		×		\$ 4,058.22
\$8,050.27)Income tax (alternativ	e ta			,
cable)				29,105.10
Total income and exce	_			\$33,163.32
Tax assessed:	440	<b>1500</b> to	AT 000 71	
Original, account No. Amended return, acco		1582 \$2	7,603.51	
No. 8-410500			1,941.67	29,545.18
Deficiency of inc	ome	and ex-		
cess profits tax	Χ			\$ 3,618.14
Excess Profi Taxable Yea				
Gene	ral	Average Me	thod	
Base Period Years	1946	1947	1948	1949
Excess profits net income per return Less: Long-term capital	0	\$39,164.58	\$67,170.90	\$71,427.85
gain				8,095. <b>92</b>
Excess profits net income as corrected	0	\$39,164.58	\$67,170.90	\$63,331.93
Number of months in base period	12	12	12	12
selected		12	12	12
Excess profits net income for 36 months				+100 00 <del>7</del> 11
Average base period net income (\$169,667.41				\$169,667.41

### Growth Method

Date of commencement of business		1923
Total assets as of January 1, 1946,		#060 #09 OO
the first day of base period	Total Paymoll	\$208,783.20
(1) Last half of base period	\$310.216.77	\$679.521.45
(2) First half of base period		440,076.96
Percentage which line (1) is of		110,010.00
line (2)	136%	154%
Excess profits net income for last		
24 months of base period	130,502.83	
(3) One-half of \$130,502.83		65,251.42
(4) Excess profits net income for		· ·
last 12 months in base period		63,331.93
(5) Weighted excess profits net in-		
come for first 6 months of 1950	\$ 31,828.62	
(6) Excess profits net income for	. /	
last 6 months of 1949	31,665.97	
20 20 20 20 20 20 20 20 20 20 20 20 20 2		
(7) Total of line (5) and line (6)		\$ 63,494.59
Average base period net income		
based on growth, highest of lines		
(3), (4), or (7)		65,251.42
(8) 85% of \$65,251.42		55,463.71
(9) 85% of general average of		
\$56,555.80		48,072.43
Line (8) or (9), whichever is		
greater		55,463.71
12% of net capital addition for tax-		00,100.11
-		0.00
able year		0.00
makal		ф 55.462.71
Total		\$ 55,463.71
12% of net capital reduction for		2,726.33
taxable year		2,120.55
December 2014 hours and in		
Excess profits credit based on in-		\$ 52,737.38
come		φ 52,151.50

(a) Excess profits net income \$79,571.61 (b) Percentage applicable 80 (c) Weighted excess profits net income, (a) × (b) 63,657.29 (d) Monthly average 5,304.77 (e) Number of months between January 1 and June 30, 1950 6 (f) Weighted excess profits net income for first six months, line (d) multiplied by line (e) 31,828.62  Taxable Year Capital Addition or Reduction  Borrowed Capital 1/1/50 12/31/50  J. H. Baxter Company Trust Deed. \$50,054.18 \$38,678.18  Security Bank Trust Deed 19,686.07 16,395.73  Security Bank Note 52,050.00 0.00  Total \$121,790.25 \$55,073.91  (1) Borrowed capital at beginning of first taxable year ending after June 30, 1950 \$121,790.25  (2) Average daily amount of borrowed capital for taxable year 91,507.15  Net capital reduction, 75% of excess of line (1) over line (2) 22,712.33  Received and filed August 3, 1955, T.C.U.S.  Served August 4, 1955.	Weighted Excess Profits Net Income for First 6 Months of 1950				
Taxable Year Capital Addition or Reduction  Borrowed Capital 1/1/50 12/31/50  J. H. Baxter Company Trust Deed. \$ 50,054.18 \$ 38,678.18  Security Bank Trust Deed 19,686.07 16,395.73  Security Bank Note 52,050.00 0.00  Total \$121,790.25 \$ 55,073.91  (1) Borrowed capital at beginning of first taxable year ending after June 30, 1950 \$121,790.25  (2) Average daily amount of borrowed capital for taxable year 91,507.15  Net capital reduction, 75% of excess of line (1) over line (2) 22,712.33  Received and filed August 3, 1955, T.C.U.S.	<ul> <li>(b) Percentage applicable</li> <li>(c) Weighted excess profits net income, (a) × (b)</li> <li>(d) Monthly average</li> <li>(e) Number of months between January 1 and June 30, 1950</li> </ul>	80 63,657.29 5,304.77			
Borrowed Capital		31,828.62			
J. H. Baxter Company Trust Deed \$ 50,054.18  Security Bank Trust Deed	Taxable Year Capital Addition or Reducti	ion			
Security Bank Trust Deed       19,686.07       16,395.73         Security Bank Note       52,050.00       0.00         Total       \$121,790.25       \$55,073.91         (1) Borrowed capital at beginning of first taxable year ending after June 30, 1950       \$121,790.25         (2) Average daily amount of borrowed capital for taxable year       91,507.15         Net capital reduction, 75% of excess of line (1) over line (2)       22,712.33         12% of \$22,712.33       2,726.33         Received and filed August 3, 1955, T.C.U.S.	Borrowed Capital 1/1/50	12/31/50			
Security Bank Note	J. H. Baxter Company Trust Deed., \$ 50,054.18	\$ 38,678.18			
Total \$121,790.25 \$ 55,073.91  (1) Borrowed capital at beginning of first taxable year ending after June 30, 1950	Security Bank Trust Deed 19,686.07	16,395.73			
(1) Borrowed capital at beginning of first taxable year ending after June 30, 1950	Security Bank Note 52,050.00	0.00			
year ending after June 30, 1950	Total	\$ 55,073.91			
Net capital reduction, 75% of excess of line (1) over line (2)       22,712.33         12% of \$22,712.33       2,726.33         Received and filed August 3, 1955, T.C.U.S.	year ending after June 30, 1950	\$121,790.25			
over line (2)	taxable year	91,507.15			
Received and filed August 3, 1955, T.C.U.S.		22,712.33			
	12% of \$22,712.33	2,726.33			
Served August 4, 1955.	Received and filed August 3, 1955, T.C.U.S.				
	Served August 4, 1955.				

### [Title of Tax Court and Cause.]

### ANSWER

The Commissioner of Internal Revenue, by his attorney, John Potts Barnes, Chief Counsel, Internal Revenue Service, for answer to the petition of the above-named taxpayer, admits and denies as follows:

### I, II.

Admits the allegations contained in paragraphs I and II of the petition.

### III.

Admits that the deficiency as determined by the Commissioner is in income and excess profits tax for the taxable year ended December 31, 1950, in the amount of \$3,618.14 all of which is in dispute. Denies the remaining allegations contained in paragraph III of the petition.

### IV.

Denies the allegations of error contained in paragraph IV of the petition, and all subparagraphs thereof.

### V.

- 1. Admits the allegations contained in subparagraph 1 of paragraph V of the petition.
- 2. Admits that the petitioner is engaged in the business of hauling and storing. Denies the remaining allegations contained in subparagraph 2 of paragraph V of the petition.
- 3. 4. Admits the allegations contained in subparagraphs 3 and 4 of paragraph V of the petition.
- 5. Admits that on or before March 15, 1951, the petitioner filed its income tax return for the taxable year ended 1950 in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this amount was the sum of \$18,467.96

which represented accounts receivable at December 31, 1950. Admits that petitioner, in its return, reported cost of operations in the amount of \$140,629.46 and included the amount of \$196.20 which represented accounts payable at December 31, 1950. Admits that the amount of income and excess profits tax shown to be due on the return was in the amount of \$27,603.57. Denies the remaining allegations contained in subparagraph 5 of paragraph V of the petition.

- 6. Admits that the petitioner filed an amended income tax return for the taxable year ended December 31, 1950, showing an additional amount of income and excess profits tax due. Denies the remaining allegations contained in subparagraph 6 of paragraph V of the petition.
- 7. Admits the allegations contained in subparagraph 7 of paragraph V of the petition.
- 8. Admits that on or about January 14, 1954, the petitioner filed an additional amended income tax return for the taxable year ended December 31, 1950, in which it reported gross receipts from its operations in the amount of \$265,624.58 and cost of operations in the amount of \$140,433.26. Admits that the total income and excess profits tax shown to be due by the petitioner in this amended return was in the amount of \$24,197.12. Denies the remaining allegations contained in subparagraph 8 of paragraph V of the petition.

- 9. Denies the allegations contained in subparagraph 9 of paragraph V of the petition.
- 10. Admits that the petitioner on or about January 14, 1954, filed a claim for refund of income and excess profits taxes for the taxable year 1950, in the amount of \$5,348.06. Denies the remaining allegations contained in subparagraph 10 of paragraph V of the petition.
- 11. For lack of sufficient information, denies the allegations contained in subparagraph 11 of paragraph V of the petition.
- 12, 13. Denies the allegations contained in subparagraphs 12 and 13 of paragraph V of the petition.

### VI.

Denies generally and specifically each and every allegation contained in the petition, not hereinbefore expressly admitted, qualified or denied.

Wherefore, it is prayed that this appeal be denied and that the respondent's determination be sustained.

> /s/ JOHN POTTS BARNES, R.E.M. Chief Counsel, Internal Revenue Service.

Of Counsel:

MELVIN L. SEARS, Regional Counsel;

E. C. CROUTER,
Assistant Regional Counsel;

R. E. MAIDEN, JR., Special Assistant to the Regional Counsel;

MARK TOWNSEND,
Attorney, Internal Revenue
Service.

Filed: September 27, 1955, T.C.U.S.

[Title of Tax Court and Cause.]

### STIPULATION OF FACTS

It Is Hereby Stipulated and Agreed by the parties to this proceeding, through their respective counsel of record, that the facts stated in, or incorporated into, this stipulation are true and may be found as facts by the Court.

- 1. The petitioner was incorporated in 1932 and is now a corporation duly organized and existing under the laws of the State of California, with its principal place of business at 21740 Alameda Street, Long Beach 10, California. During all of the years mentioned herein, the petitioner filed its tax returns on a calendar year basis with the Collector of Internal Revenue for the 6th District of California, Los Angeles, California, and his successor, the Director of Internal Revenue for the Los Angeles, California District.
- 2. The petitioner is a common carrier and is engaged in the business of hauling and storing

tubular goods for hire. It does not engage in manufacturing, processing, purchasing or selling merchandise. Its business does not require the use of inventories, and inventories are not an income producing factor. At no time mentioned herein has the petitioner changed its type of business operation.

- 3. From the date of its incorporation through December 31, 1949, it properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method.
- 4. On January 16, 1950, the petitioner received a letter from the Interstate Commerce Commission informing the petitioner that it was classified as a Class 1 Motor Carrier. Said letter, a copy of which is attached hereto as Exhibit 1-A, further stated that effective as of January 1, 1950, the petitioner would be required to keep its accounts in conformity with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.
- 5. The system of accounting prescribed by the Interstate Commerce Commission is set forth in Uniform System of Accounts for Class I Common and Contract Motor Carriers of Property, Prescribed by the Interstate Commerce Commission in accordance with part II of the Interstate Commerce Act. Issue of 1948. United States Government Printing Office. Washington: 1948. Said document is hereby incorporated by reference and will hereinafter be referred to as "The Uniform System of Accounts."

- 6. Instruction 2 of the Uniform System of Accounts provides in part as follows:
- "(a) All of the accounts prescribed in this system of accounts shall be kept when applicable and entries recorded by the double entry method. Each account in the general or subsidiary ledgers shall reflect the prescribed account number \* \* \*"

Instruction 3 provides in part as follows:

- "(a) Each carrier shall keep its books on a calendar year basis and for each month (or 4-week period—see note) all transactions applicable thereto, as nearly as can be ascertained (see instruction 9), including full accruals, shall be entered in the books of original entry (cash books, purchase journal, etc.), and posted to the general ledger."
- 7. Section 222 (g) of the Interstate Commerce Act provides that willful failure or refusal to keep accounts and records in the form and manner prescribed by the Commission shall be a misdemeanor punishable by a fine of not more than \$5,000.00 for each offense.
- 8. In conformity with the directive of the Interstate Commerce Commission the petitioner, as of January 1, 1950, changed its method of accounting to the method prescribed in the Uniform System of Accounts by numbering its existing accounts as prescribed and adding balance sheet accounts which it had not previously used in its accounting. These additional accounts and their numbers were: 1120 Accounts Receivable; 1171 Prepaid Taxes and

Licenses; 2059 Accounts Payable; 2120 Taxes Accured.

- 9. In accordance with the facts set forth in paragraphs 4, 5, 6, 7 and 8, petitioner has kept its books and records on an accrual basis commencing January 1, 1950, to the present time.
- 10. On or before March 15, 1951, the petitioner filed its income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this amount was income from services rendered in 1950 of \$18,467.96 which was represented by accounts receivable at December 31, 1950. Also included in gross receipts was the sum of \$20,431.48, which amount was collected during the month of January, 1950, for services rendered during the month of December, 1949. On the accrual method of accounting, these amounts would have represented accounts receivable at December 31, 1949.

The petitioner reported cost of operations in the amount of \$140,629.46, which sum included the amount of \$196.20 which represented accounts payable at December 31, 1950. The amount of income and excess profits tax shown to be due on the return was the sum of \$27,603.51.

11. The form 1120 for the calendar year 1950 was prepared by C. C. Carter, petitioner's secretary. Question 10 on said return was answered as follows: Is this return made on the basis of cash receipts and disbursements? Yes.

- 12. On or about July 2, 1951, the petitioner filed an amended income tax return for the calendar year 1950 showing an additional amount of income tax due. The total income and excess profits tax paid by the petitioner for the calendar year 1950 was in the amount of \$29,545.18.
- 13. The petitioner has not at any time filed an application requesting the permission of the respondent to change the method of keeping its books of account or manner of reporting its income from a cash receipts and disbursements method to an accrual method.
- 14. On or about January 14, 1954, the petitioner filed an additional amended income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$265,-624.58 and cost of operations in the amount of \$140,433.26. These amounts would be the correct amounts received and disbursed by the petitioner during the calendar year 1950 on a cash basis. The total income and excess profits tax shown to be due by the petitioner in this amended return was in the amount of \$24,197.12.
- 15. In the preparation of the foregoing amended return the following adjustments were made: Income from services rendered in 1950 of \$18,467.96, which was represented by accounts receivable at December 31, 1950, was eliminated from gross receipts. Accounts payable in the amount of \$196.20 were eliminated from cost of operations. The deduction

for real estate taxes was decreased \$2,862.77. The deduction for Social Security and State Unemployment taxes was decreased \$423.46. The deduction for Franchise tax was decreased \$2,975.21. The deduction for interest was decreased \$600.00. The amounts of the decreases in real estate taxes and Social Security and State Unemployment taxes were the difference between the amounts deductible on a cash receipts and disbursements basis and the amounts deductible on an accrual basis. The decreases in Franchise taxes and interest were in the amounts determined as unallowable deductions by the respondent in his notice of deficiency dated May 11, 1955. These latter amounts are not properly deductible by the petitioner on either the cash or accrual method.

- 16. On or about January 14, 1954, the petitioner filed a claim for refund of income and excess profits taxes for the taxable year 1950 in the amount of \$5,348.06. The amount of the taxes which it is claimed was overpaid by petitioner as set forth in said claim for refund was paid within the period prescribed in subsection 6512 (b) (2) of the Internal Revenue Code of 1954.
- 17. On or before the due date thereof, petitioner filed its corporation income and excess profits tax returns for the calendar years 1951 and 1952. These returns were prepared on the accrual basis.
- 18. On January 14, 1954, the petitioner filed amended corporation income and excess profits tax returns for the years 1951 and 1952. These amended

returns were prepared on the cash basis. On January 14, 1954, the petitioner filed claims for refund of income taxes paid for the calendar years 1951 and 1952 on the grounds that its returns for said calendar years 1951 and 1952 were erroneously prepared on the accrual basis instead of the cash basis.

- 19. As shown on petitioner's income tax returns, the petitioner's net taxable income for the calendar year 1951 on the cash basis is \$3,336.73 less than on the accrual basis. As shown on petitioner's income tax returns, the petitioner's net taxable income for the calendar year 1952 on the cash basis is \$4,323.05 less than on the accrual basis.
- 20. The petitioner's income tax returns for the calendar years 1953, 1954, 1955 and 1956 were prepared on the cash basis. The determination of income for these returns on the cash basis was made from petitioner's books of account in the following manner. The accounts receivable, accounts payable, prepaid taxes and accrued payroll taxes at the end of a calendar year were eliminated in computing taxable income and the amounts accrued to these accounts at the beginning of the calendar year were included in computing taxable income. The State franchise tax accrued at the end of a calendar year was eliminated and the franchise tax paid during the calendar year was included. The accrued federal income tax on earnings for the calendar year was eliminated.

These adjustments are entered on the work papers of the accountant who prepares the petitioner's

yearly income tax return, but are not entered on petitioner's books of account.

21. Attached hereto as Exhibit 2-B, 3-C and 4-D are photostatic copies of petitioner's original and amended income tax and excess profits tax returns for the calendar year 1950.

June 12, 1957.

Respectfully submitted,

/s/ CHARLES H. CHASE, Counsel for Petitioner.

/s/ NELSON P. ROSE, R.E.M. Counsel for Respondent.

### EXHIBIT 1-A

Interstate Commerce Commission
Bureau of Accounts
and Cost Finding
Washington 25

Jan. 16, 1950.

Advance Truck Company, 21740 Alameda Street, Long Beach 10, Calif.

### Gentlemen:

The records of this Bureau indicate that your gross revenues are sufficient to classify you as a Class I motor carrier as provided in Instruction 1

of the Uniform System of Accounts prescribed by the Commission's order of November 21, 1950.

You will be required to keep your accounts in conformity with the provisions of the Uniform System of Accounts (a copy of which is enclosed) effective as of January 1, 1950. Please refer to Instruction 3 of the Uniform System of Accounts, which contains a mandatory provision requiring Class I motor carriers to keep their books on a calendar year basis.

As a Class I motor carrier you will be required to file a quarterly report for the quarter ending March 31, 1950, and for each quarterly period thereafter, such reports are required to be filed in the district office of the Bureau of Motor Carriers at San Francisco, Calif., within 30 days after the end of the quarter.

You will also be required to file an annual report for the year 1950 and for each year thereafter; such reports are due to be filed in duplicate in Washington, D. C., by March 31 of the year following.

For your information, there are enclosed copies of orders of the Commission prescribing the filing of quarterly and annual reports, together with sample copies of report forms. A supply of report forms will be furnished you through our regular mailing channels in sufficient time for preparation and filing of reports when due.

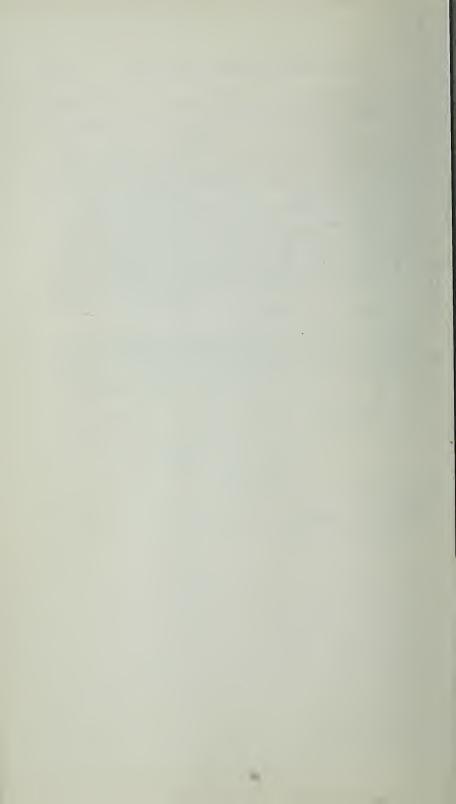
Effective as of January 1, 1950, in addition to any other requirements for the reporting of hours of service of drivers to which you have heretofore been subject, you will become subject to the requirement for filing reports on BMC-57 covering each calendar month during which no driver exceeds the on duty or driving time permitted by Rule 191.3 of Part 5 of the Motor Carrier Safety Regulations. Such report must be prepared in triplicate and filed in duplicate in the office of the district director not later than the 15th day of the month next following that for which report is made. Triplicate copy must be retained in your files.

Please acknowledge receipt and understanding of this letter and if any further information is desired, do not hesitate to communicate with this Bureau.

Very truly yours,

/s/ FORD K. EDWARDS, Director.

Enclosures cc—Director Dawson District No. 16



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#### UNITED STATES . . SCHEDULE OF CAPITAL GAINS AND LOSSES

## For Calendar Year 1950 , 1950, and ending

Or fiscal year beginning

, 1951

This selective must be filed with and us o part of the corporation's income tax return, Form 1130 or Form 1130 in form the income tax return, Form 1130 or form the income tax past, in case of sale or eschange of capital assets.	ADVANCE 21740 Alas Long Beact	TRUCK COMPA	YY	the cor	ot his this form possible did no exchange an assets during th year.
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#### DEPRECIATION

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204	н	11-1-44	1347.	14.35	1	13 2.37	268,90 268,90	
305	**	6-1-45	241 . 7	11		15 5 5 5 1 1 1 1 4 4 6 1 1 1 1 1 4 4 6 1 1 1 1 1	343.74	
306	**	6=1=65	,41, ,~	11		15 5.5	343.24	
308	44	1-1-46	417.70	3 / 63	1 60	1374 4	343.74	
309	**	1-1-46	41:. ٢	1 1	1, 00	17 4. 46	-43.74	
310	**	1-1-46	2120.40	1 6.64	ns of	1 16	300.79	
207		1-1-46	1 c c		15 1 . []	363.00	25.38	
208	**	A-20-41	, 1 , 3	141.51	1	10 10 10	411.46	
311	**	8 =10=46	1 3,000	100.00	74.30	I I I F RK	481.75	
209		3-20-45	1,100	11 14	4, 17	1-76.25	421.75	
210	17	4-4-47	=10.	14 51	* * 72	111 .17	401,46 400,46	
313	91	4-4-47	1173.60	14 .40	4.0"	13000	4-1.25	
351		4-25-47	1841.46	102.12	3/2 .50	1450,80	547.43	
212	41	1. = 3=4.2	-36.4	140.51	. ~?	34.79	446	
213	**	12-3-47	21-4	4 .5)	7	-34.79	4 € .46	
214	"	1:-3-67	1 . 4	1 .51	-11	34,29	400.46	
315	31	1'=3=07	1 3	• • •	4. 7	1 (1.56	490.25	
316	11	1. =3=40	13.00	1 . 4	1,14,1	1741.46	450.75	
317	61 19	1 = 2=4.7	24.	10 m p.R	4. 0	1 3.56	48C.75	
353	4	3-1-49	41.61	9	11 2 50	3 10 11,44	54".43	
373		E-T-S-C		- 24	1	34100.01	475.96	
Autom	obiles:		- 10 10 1	4 . 444		:4100.01	11431.34	11,431.34
87	Cadillac							
90	Plymouth	6-21-8-3	31 43 41	15.00	15 1011	a. 3. ar	5 4,50	
93	Cadillac	1 =3,-42	411 25		1' .	31	250.71	
			111	4 - 173	14 40	313 501.40 17.4.31	1345.31	1,345,31
								24 32
					Calletat Sormar	it stent to.	. ?	27,637.71



ADVANCE TRUCK COMPANY 21740 Alameda St., Long Beach 19, Calif.

#### DEPRECIATION (CONTINUED)

Buildings & Improvements:	Date Acquired	Cost	Depr <sup>4</sup> n. Previously Taken	1950 Depreciation	Totals . \$27,637.71
Fence (Steal) Fence (Steal) Fence (Steal) Roads Pipe Racks Pipe Racks	1-5-39 2-1-49 1-5-39 10-1-39 10-1-39 11-12-40 5-1-41 3-1-45 5-1-45 5-1-45 5-1-45 6-15-47 1-8-48	\$ 4086, 59 123, 66 3018,60 4800,20 1598,00 2158,03 2107,60 2107,60 2107,60 3944,46 5944,46 5948,20 453,22 1928,55	\$ 7996, 84 113, 60 1273, 64 1376, 11 1141, 44 1477, 01 3641, 64 17727, 41 0807, 91 1883, 96 500, 38 1743, 50 24, 673, 51	\$ 272.46 FF	4,039.65
Spur Track	9-19-43	6200,00	3900.91 TOTAL DEPI	620.00 RECIATION	620,00 32,297,36
		HECAP:			

#### Truck

Trucks Trailers Automobiles Eldgs, & Improvements	\$14,861.06 11,431.34 1.345.31 4.039.65 620.00
Spur Track	32,202.36

#### SCHEDULE B - Cost of Operations:

	089.37
Gaseline and 011 17.	667.63
Gasqline Tax 4.	862.10
	932.74
Tires and Tubes 3.	304.02
	980.50
Misc. Transportation	
Expense	493.98
Tariffs and Schedules	200,11
	TOO 67

#### SCHEDULE F . ther Deduction

The state of the s		
Light, Power, lest, Water	3	264.95
Insurance		11,439,40
Expenses of General Officers		86.07
Office Supplies & Expenses		1,953.97
Telephones		685,66
Employees Welfare Expense		728.00
General Expensa		2,399.00
		17,557.05



Subsciolo J.—DEPRECIAT	TION. (See Instruction 26)	pa 2
1 State of Property of transformer, many and transformer of the state	TO TO CONTROL OF THE PARTY OF T	lab.
B		
		-
SCHED	TLE ATTACHED	
Total. (Enter as from 36, page 1)	for the state of t	
	ACTIONS. (See Instruction 30)	
		-
SCHED	ULE ATTACHED	
	JUS ATTACHED	
		-
TAX COMPUTATION. (See	Tax Computation Instructions)	
		-
Per other neighb years coding after June 30, 1960, Form 1120FY and nor rates she	t YEAR 1900 , and before December \$1, 1061, obtain from Collector serve Servan to compute the tax	_/
S. Hot browne Green St., page 1).	78,014 16	6
R. Lots: Dividuals reserved sredit- (a) Bater 66 percent of column 2, Schoolsin R.	315 56-1	
(a) Mater 66 percent of column 2, Subodule E. (b) Mater 37 percent of column 2, Subodule E.	1 247 /	
Worked effectionals assertant assertion. Evaluations of (a) and (b)	shore, but our to control 315 56	
	man 8 (s) and 8 (b), page 1 2 34.7 70	
8. Credit for dividends paid an certain professed stock if taxpayer		
it. Circlin for Western Hemisphere trade eveporations	315 56	
A Derica set lacena.	. 77,698,60	2
S. Combined assumed test and nurtae. If amount of time 2 is		/
Had over \$36,000, onter 26 percent of but 5 CD percent if a cancalida		
Over 836,000 Compute 42 persons of line 5 104 persons if a consolida		-
12		
<ol> <li>Econ: Normal tax adjustment fm partially tan-compt interest; sute of States S (a) and S (b), page 1, but not in races of 23 pers</li> </ol>	or 33 povernt of the ours	
Surtes adjustment for partially ten-exampt interest. If amoun		1
Nat over \$25,000; noter erro	1	
Over \$35,000; switer 1 persons of the leaser of (a) own of 1 \$ (b), page 1, as (b) line 2 minus \$25,000	forms 9 (a) and	
8 (b), page 1, no (b) line 8 minus 825,000 8. Normal tox and certax	27,883 41	
N. Rermal tax and certax  19. Total tax (line 9, or line 22 of Schodule C)	27,603 51	-/
19. Total toe (line 9, or time 22 of Schledure Cy.	11. 11.11	
QUES:	TIONS	
<ol> <li>If the is the corporation's first esture, fadicate whether fall completely own business Q<sub>i</sub> are (b) accessor to previously extring business which was organized as (1) acceptation Q<sub>i</sub> (2) partnership Q<sub>i</sub> are (2) note pre-</li> </ol>	Is this a consolidated return?	Sast .
organized as (1) corporation (3, (2) partnership (3, as (3) sole pro-	which chall be filled in and filed as a part of this return.)	
pristorship C. or (4) other (Indicate) If successor to previously existing business, give name and address of the previous business	9 If this is ont a consolidated return (a) Did the corporation own of any the during the texable year 80 percent or more of tan vetting stock	
ergrafestion	another corporation either domestic or fervire? No . or (\$1.464 or	
	serporation, individual, partnership, trum, or association was as a time during the taxable year 50 persons, as more of the correction	any
	voting stock? HO (if either answer is "yes," attach separa	ule.
2. Collector's other where the corporation's return for the preceding year	voting stock? RQ (If either answer is "yoo," attack separa substitute showing (I) Name and address, (7) percentage of stock uses (3) data stock was negotively and (4) the nodestor's office is which the more tax returns of sorth on-poration, individual, parametals, true as summeration for the best teacher year was fined,	od;
we that Los Angalas	income tax return of such corporation, individual, partnership, tru	100
for 1848 871,780.35	10. Is this return made on the basis of each receipts and disturmment Yes. If not, describe fully in separate statement.	1607
	If State whether the inventories of the beginning and end of the texab	ble
	of the property of the state of	A ST
Located et	etatement, giving date towardery was has reconcurry with books or Procinc I searce tion 2).	***
Bear the approximate number of stockholders at the close of the ter- able year	12. Did the corporation make a return of information on Forms 1098 as 1099 no Form W-2a for the calendar year 1850 (see Eastruction G-(1))? Yes	ad es
<ol> <li>Check if the corporation is a farmers' marketing or a farmers' purchasing measurements association (), an other cooperative association (),</li> </ol>	18 Has any transaction described to Instruction G-(3) corumed on or after	
	October 8, 1940? (Answer "yes" as "no") NO	
7. Is the corporation a personal holding company within the meaning of	14. Did the responsition of any time during the teach is year new directly a	
sorthm 801 of the faternal Revenue Code? No (If ee, as addi- thous return on Form 1150 B asset be filed.)	indimetry any stock of a foreign corporation? HO (If so, estantial statement as required by instruction K-(31)	•



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Page 4 Substitute Land	MANCE	SHEET	B. 0	ter Instrugion i Tussis Yes	2				
ADDITO STATE		Page	==	Tunki Yan			tel of T	makin Year	
100		Amount	,	a. 6,751		Amenas	_	o Treat	Mer no
L. Diete and average restricts			1	89.124.	22	18,467	96	09,68	30
Loss Sheeve for had dates		MARKET AND THE					TAKE	18,46	2 96 .
6 See patricks									
61 Work in process						B	-		
60 West to present									
à. Investmente in provenimental obligationer	-	MANAGE CO.	-		****	***********	A.Colo		
A Secretarian to the governmental ability below.  10 19 10 10 10 10 10 10 10 10 10 10 10 10 10	8		ļ			8			
The state of the latter between the latter and the latter by the latter and the latter by the latter			l .						
	-								
On contrast the contrast of the Votes Contrast of the Contrast									
& Other Investments (Hamiles)	8.		Arresta				_		
A Control - A	-								1
(b) Description courts (fermion)					ı				
Blaze, & Improvements Trucks, Trailers, Equipment	63	,160	90			63,160	90		
Tracks, Trailers, Equipment	243	274	09			236,704.	09.		
Life: Surrey for deposition	153	,160 ,774 ,934 ,160	33	153,774	66	63,160 236,704 299,864 178,741	99	323 700	
(9) Depletable production of the control of the con	. 8	-00111				8	42	121,123	- DU
Enter Steamers for dephtion				178,313	20				
A color Mites Receivable	1 . 6.	475	68	+1.9.24.1	7	· 6.620	93	178,313	. 29
THE MESTARDIS	87	213	72	40		91,430	22		
		-	-	93,689	0.0			98,053	15
S. Tona Amon.	-			£32,528	50			\$425,644	50
L. Accounts payable				8				196	20.
A decimal payable.      Description of the second payable.      Description description payable.      Second of the second payable of the second payable.      This original maintainty of 1 year or news.      Advanced expresses (Secondary 1992-99).								B	FY.
56 With column materials of less than I year	121	790	25	121,790	25	S. PETONS	44		1
60 With original manualty of 1 year or more.	6	4.74		2001/20	2.	55,073 34,525	7 <u>1</u>	55,073	- ST
	-	-				0.270262	24.	34,525	97
Insurance Premiums Withheld	8.29	172	17	1,184		a 2,109 40	72		
sik. Burylan procures (Standard)	8	4/6	-	A.44995	20	40	50	2,149	75
-									
Cupited stool; Humber of shares so and of year— (a) Produced stool. (		-			- 1				HIGA.
On Common stock ( 1500 )	150.	000	00	150,000	00	150,000	20	150 000	ha
16. Poblic or capital surplus						27.1.4			
A Date I was not		1	ŀ	159.553 9 432,528 8	5		- 1	183,698 #27,604	67
Sub-dale M RECONCREATION OF NET ENCORE	ARID AL	MAR VOC	- 00	#324220 D	V. [		_	#22,504	30.
1. Total distributions to most holders charged to most corples during the tamble year:	A A	LABOR		EARINED SURP	LUS	AND UNDIVID	100	ROPTES	-
And Charles	- (	W. E4	reed of pre	surples and andi- soding taxable p	rided par (5	profits at chare chedule L)		59,553	95
(A) Stock of the corporation.		16. N	to the	omo before not op teen 32, page 1)	porati	ng lom deduc-		78,014	
8. Contribution or gifts durant over 5 persons			40E (I	50th 32, page 1)			-	70.014	10
		18. No	e) O	able interest on: Nigations of a S political subdivis District of Cal States possession	tate,	Torritory, or			
b. Putters between and come profits town 54,37.  Some time of foreign constrine or United States promotion of column on corolla in orante or in part in bean 68, page 1.	4.73			political subdivide District of Col.	don t	hereof, or the			
Otatio or in part in hom III, page 1				States pessenticae		-			
L. Political based paid on han-free erronant bussis.		,	8) Ot	oligation of the U (1) Obligations is Supremotor to supremotor to and Transury March 1, 196	Initiod	Status on or before	1		
S. Special improvement turns tending to improve the value of the property necessarily.				Reptember 3 mylage ben	4, 101	7; all pestal		1	
P. Burkermann, marrish, and capital expendi-				and Treasury	Dee bills	lember 1, 1940,			
2. Imparence providence paid on the tile of any				March 1, 191	1				-
directly or indirectly a branching				(3) United States Treasury be principal ass loss, bound pr	De Ti	ngs boods and resed in the			
& Washington beauth basered in perchasing or marying enough interest obligations		•		principal am	lor to	of 85,000 or   March 1, 1941			
sit. Homes of capital home over capital gains.  12. Addition to surplus reserves (lot reparately):		6	ı) O6	Significan of Perfer	ni las	d banks, joint			
10				agations of Ferior most land banks, modiate cruit; be Marsh 1, 1901	and a	Federal later-			
		16 Out		Marsh 1, 1901 Starable Income					_
		00	(0) .		Chose	1007:			
S. Other maderable deductions:	-	-	(a) .		-				-
		21. Ch	Name of	against surplus	PRODU	ves deducted			
A Adjustments for the purposes not recorded on	-			posses in the secu	- U40				
Beide (Austin):			(6)		***		-		
0		M. Adj		note for the purpo	-	ex recorded on			
A. Smokey debits to operant coupling (possion):			(a) _	Depletion	1			505 2	9
			(6) _		_				
		-	Cab	redits to earned o	-pie	· (Hemins):			
and sold rided proble or charge plant of oten of the beauth year 182 600	La I		m _						-
			40 _						-
164 0.231.0%	140	16. To	m) of	Nom 17 to 20			22	WW.	0
						-		-	-



#### **CLAIM**

1'1

TO BE FILED WITH THE DIRECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

REFUND OF TAKES LILEGALLY, EMBRYCHASTY, ON EXCESSIVELY COLLECTED.  REFUND OF ANOIS PERD YOUR STANDS UNDER U. U.S. D. O. U.S. D. N. ERROR ON EXERS.  ABATEMENT OF TA ASSESSED (not applicable to counter, sill, or income taxes).  JUNE 2.357  FLITTERS IN A ASSESSED (not applicable to counter, sill, or income taxes).  JUNE 2.357  FLITTERS IN A ASSESSED (not applicable to counter, sill, or income taxes).  JUNE 2.357  FLITTERS Street address  E174 ) Alameda Street  City, postal zone number, and state 20.2 Breach to, cultiformia  Period (if for tax reported on annual basis, prepare separate form for each taxable year) from 5 un. 1 1950 (a Dec. 51. 1).  Kind of tax. 1.000.00 and excess profits tax  Amount of assessment, \$2.9.345.18 (dates of payment as presc. ibed by law).  Date stamps were purchased from the Covernment  Anoust to be abated (not applicable to income, estate, or still taxes).  Tax payer erroneously reported income on the account basis whereas taxayer is and always has been on a cash basis.  Tax paid  1 hereby certify that this claim for refund was prepared by me on behalf of the cialment and that the facts stated therein are true and correct to the best of my knowledge and belier.  Partitum: Partitum Assessment of the cialment and that the facts stated therein are true and correct to the best of my knowledge and belier.  Partitum: Partitum Assessment of the cialment and that the facts stated therein are true and correct to the best of my knowledge and belier.
REFUND OF AMOUNT PART WESSER UNDER UNDER ON USED IN ERROR OF Excess.  ARATEMENT OF TAX ANGESER (not applicable in case, gift, or income taxes).  JUNE 2.357  FIGURES CI  RESPONDENTS  Name of taxpayer or purchased from the control of stamps  City, postal zone number, and state and Bruch 10, or informing  Period (if for tax reported on annual basis, prepare separate form for each taxable year) from our 1 1000 to Dec. of 1 1000 to
ABATEMENT OF TAX ASSESSED (not applicable to colate, gift, or income taxes).  JUNI 2.357  FARTHLESS JUNI 2.357  FARTHLESS JUNI 2.357  Name of taxpayer or purchaser of stamps JUNINGE TRACK COMPANY  TIPE 08  Street address 21740 Alameda Street  City, postal zone number, and state 2002 Bruch 10, cultiformia  Defined for tax reported on number hash, prepare separate form for each taxable year) from 500 m. 1. 1000 m. Dec. 51 m.  Kind of tax 1.000me and excess profits tax  Amount of abstead (not applicable to income, estate, or still taxes)  Tax payer erroneously reported income on the accrual basis whereas taxabyer is and always has been on a cash basis.  Tax paid  1 ax liability per amended return  filed concurrently harewith  24,137.12  by 340.06  Charicton 2 for Charles or Middle 4 Andrew  PARTILIES PARTILIES  PARTILIES PARTILIES  PARTILIES PARTILIES  Lambde 4 Farthless  So 30.31 m. Lec 14. Calif.
Name of taxpayer or purchaser of stamps
Name of taxpayer or purchaser of stamps Division This Could not be stated and state an
Name of taxpayer or purchaser of stamps
purchaser of stamps
City, postal zone number, and state access fleuch 10, cultiformia  District in which return (if any) was sind of the highest to the late of the post of the control of the
City, postal zone number, and state access professions and the state of the profession of the state of the profession of the state of t
Period (if for tax reported on annual basis prepara-eporate form for each taxuble year) from 5 UR. 1 1950 (bcc. 31 1)  Kind of tax income and excess profits tax  Amount of assessment, \$49.945.18 dates of payment as prescribed by law  5 Date stamps were purchased from the Government as prescribed by law  5 Date stamps were purchased from the Government as prescribed by law  5 J. Amount to be abated (not applicable to income, estate, or sift taxes)  The claimant believes that this claim should be allowed for the following reasons.  Taxpayer erroneously reported income on the account basis whereas taxayer is and always has been on a cash basis.  Tax paid  1 ax liability per amended return  1 filed concurrently herewith  24,137.12  1 hereby certify that this claim for refund was prepared by me on behalf of the Claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.  Paktivity: Radiala Radiala Street os described as stated.  (Attack before the sheets Mayere is not ambutch)
Amount to be refunded
3. Date stamps were purchased from the Government  3. Amount to be refunded
Amount to be refunded
Amount to be shated (not applicable to income, estate, or sift taxes)  The claimant believes that this claim should be allowed for the following reasons.  Taxpayer errone-outly reported income on the accrual basis whereas taxayer is and always has been on a cash basis.  Tax paid  Tax paid  Tax liability per amended return  filed concurrently herewith  Refund due  Charteto, 2 for Charte on thirds  I hereby certify that this claim for refund was prepared  by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.  Paidlant Procedure about affects  Paidlant & Franch.  Paidlant & Franch.  Charteto about Mysers is not smillers.
The claimant believes that this chain should be allowed for the following reasons.  Tax payer erroneously reported income on the accrual basis whereas taxayer is and always has been on a cash basis.  Tax paid  1
Taxpayer erroneously reported income on the accrual basis whereas taxayer is and always has been on a cash basis.  Tax pid  1ax liability per amended return filed concurrently herewith  24,137.12  Refund due  Chartetons for Canda on Northa  1 hereby certify that this claim for return was prepared by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.  Pakthan: Pakthan: Pakthan: According Street  25 Southwise Street  25 Southwise Street  25 Southwise Street  25 Southwise Street
ayer is and always has been on a cash basis.  Tax paid  Inx liability per amended return  filed concurrently herewith  Refund due  Charleto, S for Chalm on Abroto  I hereby certify that this claim for refund was prepared by me on behalf of the claimint and that the facts stated therein are true and correct to the best of my knowledge and belief.  Pakthin:  Pakthin:  Pakthin:  Pakthin:  Anach betireldes absert Masser is and samdersh
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riax liability per amended return filed concurrently herewith  Refund due  Charletone for Conductor Natural  I hereby certify that this claim for refund was prepared by me on behalf of the claiment and that the facts stated therein are true and correct to the best of my knowledge and belief.  Partition:  Partition:  Partition:  Attack betterable absert a sammers)
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Character of the chain of the facts stated therein are true and correct to the best of my knowledge and belief.  Pakthin: Franklar Street of School School School Street of School School School School School School Street of School Schoo
I hereby certify that this claim for refund was prepared by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.  PARTIME: PARTIME PARTIME Street
I hereby certify that this claim for refund was prepared by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.  PARTIAN:  PARTILIN: PARTILIN: FARTILINE Street
by me on behalf of the claimant and that the facts stated therein are true and correct to the best of my knowledge and belief.    PairTrunt:   PairT
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PARTION: FARTAGE PARTAGE STREET  OS So. III. Les 14. Calif.  (Attach letter-like abserts it space is and sufficient)
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950 Boldering Street .os .du *_ec [4, Calif. (Attach betrechte aberts Hopers is not safficient)
(Attach letter-star abrets if spore is not sufficient)
I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been exam
by me and to the best of my howledge and belief is true and correct.
Signed advance Truck to
Dated Jan 7th, 1954 (NEE INSTRICTIONS ON OTHER MINE)  NEE INSTRICTIONS ON OTHER MINE)
Dated Jan 7th, 1054 (NEE INSTRICTIONS ON OTHER MILE)
(NEE INSTRUCTIONS ON OTHER MIDE)   10- 10400
V



## [Title of Tax Court and Cause.]

#### FINDINGS OF FACT AND OPINION

Taxpayer was properly on the cash basis for keeping its books and reporting its tax in 1949 when certain services were rendered. As directed by the Interstate Commerce Commission it changed its method of keeping its books to the accrual method as of January 1, 1950. Held, taxpayer was properly on the accrual method for reporting income in 1950, but must include in income payments received in 1950 for services performed in 1949, under the provisions of section 42, I.R.C. of 1939.

CHARLES H. CHASE, ESQ., For the Petitioner.

GEORGE E. CONSTABLE, ESQ., For the Respondent.

### Opinion

#### Mulroney, Judge:

Respondent determined a deficiency in the income and excess profits tax of petitioner for the year 1950 in the sum of \$3,618.14. Petitioner does not contest respondent's adjustments which resulted in the deficiency but petitioner claims an overpayment of income tax for said year in the sum of \$5,348.06.

The only question for decision is whether amounts received in 1950 for services rendered in 1949, are includible in 1950 income when petitioner was properly on the accrual basis for reporting income in

that year, and properly on the cash basis for reporting income in 1949.

All of the facts were stipulated and are found accordingly. Petitioner is a corporation organized and existing under the laws of the State of California with its principal place of business in Long Beach, California. During all of the years mentioned herein the petitioner filed its tax returns on a calendar year basis with the then collector of internal revenue for the sixth district of California, Los Angeles, California, and his successor, the district director of internal revenue for the Los Angeles, California district.

The petitioner is a common carrier and is engaged in the business of hauling and storing tubular goods for hire. It does not engage in manufacturing, processing, purchasing or selling merchandise. Its business does not require the use of inventories, and inventories are not an income-producing factor. At no time mentioned herein has the petitioner changed its type of business operation.

From the date of its incorporation through De<sub>7</sub> cember 31, 1949, it properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method.

On January 16, 1950, the petitioner received a letter from the Interstate Commerce Commission informing the petitioner that it was classified as a Class 1 Motor Carrier, and that effective as of

January 1, 1950, the petitioner would be required to keep its accounts in conformity with the Uniform System of Accounts prescribed by the Interstate Commerce Commission.

The system of accounting prescribed by the Interstate Commerce Commission is set forth in Uniform System of Accounts for Class 1 Common and Contract Motor Carriers of Property, Prescribed by the Interstate Commerce Commission in accordance with Part II of the Interstate Commerce Act. The Uniform System of Accounts of the Interstate Commerce Commission prescribes an accrual method of accounting.

Section 222 (g) of the Interstate Commerce Act provides that willful failure or refusal to keep accounts and records in the form and manner prescribed by the Commission shall be a misdemeanor punishable by a fine of not more than \$5,000 for each offense.

In conformity with the directive of the Interstate Commerce Commission the petitioner, as of January 1, 1950, changed its method of accounting to the method prescribed in the Uniform System of Accounts. Petitioner has kept its books and records on an accrual basis commencing January 1, 1950, to the present time.

On or before March 15, 1951, the petitioner filed its income tax return for the calendar year 1950, in which it reported gross receipts from its operations in the amount of \$284,092.54. Included in this

amount was income from services rendered in 1950 of \$18,467.96 which was represented by accounts receivable at December 31, 1950. Also included in gross receipts was the sum of \$20,431.48, which amount was collected during the month of January, 1950, for services rendered during the month of December, 1949. On the accrual method of accounting, the latter amount would have represented accounts receivable at December 31, 1949.

The petitioner reported cost of operations in the amount of \$140,629.46, which sum included the amount of \$196.20 which represented accounts payable at December 31, 1950. The amount of income and excess profits tax shown to be due on the return was the sum of \$27,603.51.

While petitioner stated on said income tax return that said return was made on the basis of cash receipts and disbursements, it actually was prepared on the accrual basis and the parties herein have so stipulated.

On or about December 3, 1951, the petitioner filed an amended income tax return for the calendar year 1950 showing an additional amount of income tax due. The total income and excess profits tax paid by the petitioner for the calendar year 1950 was in the amount of \$29,545.18.

The petitioner has not at any time filed an application requesting the permission of the respondent to change the method of keeping its books of account or manner of reporting its income from a

cash receipts and disbursements method to an accrual method.

On May 11, 1955, respondent issued a notice of deficiency in which he accepted petitioner's income tax return for the calendar year 1950 which was prepared and filed upon the accrual basis. In this statutory notice of deficiency certain adjustments were made which, as stated, are not contested here, but respondent did not eliminate from the petitioner's income for 1950 the accounts receivable at December 31, 1949. Petitioner now concedes that respondent may require the petitioner to report its income on the accrual basis but contends that its income must be recomputed by eliminating the accounts receivable at the beginning of the year 1950.

The sole question here is whether the sum collected in 1950 on 1949 accounts receivable were properly included in 1950 income in view of the fact that petitioner was properly on the cash basis in 1949 and properly on the accrual basis in 1950. Petitioner's contention is that because it was properly on the accrual basis for reporting in 1950, these amounts were not taxable in that year. Respondent asserts that those amounts which were collected in 1950 constitute taxable income in that year regardless of petitioner's change in method of accounting to the accrual basis.

To sustain its position—that the amounts in controversy are not taxable in 1950—petitioner relies upon a line of cases where there was a change in the method of reporting and it was held the Com-

missioner could not include in the year of change to the accrual method, accounts receivable which should have been accrued in the prior year. Petitioner cites Commissioner v. Mnookin's Estate, 184 F. 2d 89, affirming 12 T. C. 744; Robert G. Frame, 16 T. C. 600, affd. 195 F. 2d 166; David W. Hughes, 22 T. C. 1; Clement A. Bauman, 22 T. C. 7; Welp v. United States, 201 F. 2d 128; Caldwell v. Commissioner, 202 F. 2d 112; Commissioner v. Dwyer, 203 F. 2d 522; and Commissioner v. Schuyler, 196 F. 2d 85.

In none of the cited cases did the taxpayer in the years before the change-over keep its books and compute and report its income on an entirely proper basis. That is an important distinction. In the cited cases the Commissioner was attempting to tax amounts that had not been received or that should have been accrued as income in a prior year not before the Court. That is not true here. The amounts here in controversy had all been received and were not income in 1949 because petitioner at that time was properly reporting income on the cash basis, and the amounts were not received in that year.

Section 42 of the Internal Revenue Code of 1939 provides, in part, that

The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under Section 41, any such amounts are to be properly accounted for as of a different period. \* \* \*

It cannot be argued that the receipt of \$20,131.43 in January 1950 for services rendered was anything other than an item of gross income. The narrow question is whether this item for services is includible in gross income in 1949 when the services were rendered or 1950 when the \$20,431.48 was received in payment for said services.

The statute is designed to see to it that all items of gross income shall be properly accounted for in gross income for some year. No item of gross income is to escape. It names the year "in which received" as the proper year to include the item unless, by virtue of some permissible method of accounting, the item is to be properly accounted for as of a different period. Since the \$20,431.48 was received in 1950. that is the year it is to be included in gross income unless petitioner can show the item should have been "properly accounted for" in 1949. Far from showing that this item should have been properly accounted for in 1949, petitioner in effect, stipulates that this item could not have been "properly accounted for" in 1949. That is the full force of the stipulation that petitioner in the year 1949 "properly kept its books of account and properly reported its income for Federal income tax purposes on the cash receipts and disbursements method." In short, the stipulated facts preclude the application of the "unless" clause of the statute.

With no other year for properly accounting for the item the command of the statute is that the year "in which received" or in this case 1950, is the year the item is to be included in the gross income.

The fact that the change from the cash, to the accrual method of keeping its books was involuntary, and done upon the order of the Interstate Commerce Commission, is not material. Petitioner, when it filed its 1950 return on the accrual basis was merely following section 41, Internal Revenue Code of 1939, by making a conforming change in its method of reporting income. Respondent expressly accepted the change to the accrual method of reporting as he had a right to do. Josef C. Patchen, 27 T. C. 592.

Petitioner's argument on brief is that since it was "required" to make the change from cash to accrual method of reporting, the respondent cannot "require the taxpayer to report as income in the year of change items which are not income or do not represent income according to the accrual method." The answer to this argument is that under section 42, supra, every taxpayer is required to report every item of gross income that he receives in some year. It is either the year of receipt or some other year when it could be properly accounted for. When, as here, there is no other year when it could properly be accounted for, then the fact that the year of receipt is an accrual year for reporting, is immaterial. The statute does not say the item shall be included in income in the year of receipt, if that would be proper according to the method of accounting then being employed by the taxpayer. The method of accounting of the taxpayer in the year of receipt, and whether that method was the result of a voluntary or involuntary change-over, are both immaterial.

Decision will be entered for the respondent.

Filed January 20, 1958. Served January 20, 1958.

# Tax Court of the United States Washington

Docket No. 59010

ADVANCE TRUCK COMPANY, a Corporation,
Petitioner,

VS.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

#### DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed January 20, 1958, it is:

Ordered and Decided: That there is a deficiency in income and excess profits tax for the year 1950 in the amount of \$3,618.14, and that there is no overpayment in such tax due to petitioner for said year.

[Seal] /s/ JOHN E. MULRONEY, Judge.

Entered January 29, 1958. Served January 31, 1958.

On or about January 14, 1954 the petitioner filed a timely claim for refund with the respondent claiming an overpayment of taxes for the taxable year 1950 on the grounds that it was properly on the cash basis for the purposes of reporting its income for Federal income and excess profits. On May 11, 1955 the respondent issued a notice of deficiency in which he rejected petitioner's claim for refund and determined that petitioner was required to report its income on the accrual method. The respondent made certain adjustments to petitioner's income which were not contested in the Tax Court. The petitioner claimed in its petition to the Tax Court that if the respondent's determination that the petitioner was required to report its income on the accrual method was correct, its income for the calendar year 1950 should be recomputed by eliminating from gross receipts the accounts receivable at December 31, 1949, which on the accrual method of accounting were not income to the petitioner in 1950. Such a recomputation would result in an overpayment by petitioner of its income and excess profits tax for the calendar year 1950.

The Tax Court in its opinion held that the petitioner was required to report its income for Federal income tax purposes on the accrual method for the calendar year 1950 and that under the provisions of Section 42, 1939 Internal Revenue Code, the accounts receivable at December 31, 1949 were income of the petitioner in the year 1950 when received.

On the basis of its opinion, the Tax Court entered its decision that there was no overpayment in in-

come and excess profits due to the petitioner for the year 1950.

Wherefore, it is prayed that this Honorable Court review the matters set forth herein and reverse the decision of the Tax Court of the United States.

Respectfully submitted,

/s/ CHARLES H. CHASE,
Counsel for Petitioner on
Review.

Of Counsel:

/s/ L. A. LUCE.

Received and filed April 14, 1958, T.C.U.S.

[Title of Court of Appeals and Cause.]

Tax Court Docket No. 59010

## STATEMENT OF POINTS TO BE RELIED UPON

Advance Truck Company, a corporation, petitioner on review submits the following Statement of Points upon which it intends to rely as the basis of its petition for review.

That the Tax Court of the United States erred.

1. In finding as a fact that the petitioner's income and excess profits tax return for the taxable year 1950 was actually prepared on the accrual basis. This fact was not stipulated by the parties, and the finding is not supported by the evidence.

1957

Nov. 12—Reply Brief for Petitioner filed. Served 11/18/57.

1958

- Jan. 20—Opinion filed. Judge Mulroney. Decision will be entered for respondent.
- Jan. 29—Decision entered, Judge Mulroney. Served 1/31/58.
- Apr. 14—Petition for review by U.S. Ct. of Ap. 9th Cir., filed by petitioner.
- Apr. 14—Proof of service of petitioner for review filed.
- Apr. 14—Statement of Points with proof of service thereon filed.
- Apr. 14—Designation of Contents of Record on Rev. with proof of service thereon filed by petitioner.
- Apr. 14—Notice of filing Designation of Contents of Record on Review with proof of service thereon filed.

## [Title of Tax Court and Cause.]

#### CERTIFICATE

I, Howard P. Locke, Clerk of the Tax Court of the United States, do hereby certify that the foregoing documents, 1 to 11, inclusive, constitute and are all of the original papers on file in my office as called for by the "Designation of Contents of Record", including Joint Exhibits 1-A, 2-B, and 6-F, attached to Stipulation of Facts, in the case before the Tax Court of the United States docketed at the above number and in which the petitioner in the Tax Court has filed a petition for review as above numbered and entitled, together with a true copy of the docket entries in said Tax Court case, as the same appear in the official docket of my office.

In testimony whereof, I hereunto set my hand and affix the seal of the Tax Court of the United States, at Washington, in the District of Columbia, this 7th day of May, 1958.

[Seal] /s/ HOWARD P. LOCKE, Clerk, Tax Court of the United States.

[Endorsed]: No. 16024. United States Court of Appeals for the Ninth Circuit. Advance Truck Company, a Corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of the Record. Petition to Review a Decision of The Tax Court of the United States.

Filed: May 19, 1958.

Docketed: May 22, 1958.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

